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ALLEN v. COMMONWEALTH.

Jan. 20, 1921.

[105 S. E. 589.]

Intoxicating Liquors (§ 132*)—Volstead Act Did Not Nullify Existing State Law.—Congress, by the enactment of the Volstead Act, pursuant to the power conferred upon it by Const. U. S. Amend. 18, prohibiting the manufacture, sale, etc., of intoxicating liquors, did not take possession of the entire field of prohibition legislation, state as well as federal, so as to nullify the existing state law on the subject; any statute previously or subsequently enacted by the state creating or not creating state offenses would not be in conflict with the Volstead Act or the Eighteenth Amendment unless or only to the extent that it should attempt to nullify the federal law creating the federal offenses.

Error to Corporation Court of Newport News.

Edward Allen was convicted of unlawfully manufacturing, etc., ardent spirits, and he brings error. Affirmed.

Allan D. Jones, of Newport News, for plaintiff in error.

The Attorney General and *Jno. R. Saunders*, of Richmond, for the Commonwealth.

VIRGINIA RY. & POWER CO. v. CHERRY.

Jan. 20, 1921.

[105 S. E. 657.]

1. Carriers (§ 299*)—Street Railway Not Liable to Passenger Knocked from Running Board Unless Motorman Could Have Stopped.—A street railway company was not liable for injuries to a passenger who was knocked from the running board of a car by a truck standing in the street, if the motorman could not have stopped the car after he saw or had an opportunity to see the truck.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

2. Carriers (§ 340*)—That Passenger Was on Running Board in Violation of Ordinance No Bar to Recovery for Negligence.—Negligence of plaintiff, who was injured while violating an ordinance, like his negligence in any other form, must proximately contribute to the injury in order to constitute a bar to recovery, and it does not so contribute in contemplation of law if, after the plaintiff's peril is or ought to be discovered, the defendant has a last clear chance to avoid the injury; and, where the motorman of a street car knew that plaintiff passenger was riding on the running board of the car

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in violation of ordinance, the street railway was liable for negligence of such motorman in failing to stop his car when he saw or should have seen that a standing truck would throw plaintiff from the running board.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

3. Carriers (§ 318 (4*))—Evidence Held to Show that Motorman Should Have Seen that Truck Would Strike Passenger on Running Board.—In an action for personal injuries by passenger brushed from running board, where he was riding contrary to ordinance, by a standing truck, evidence held to show that the motorman saw or ought to have seen the truck in ample time to stop his car.

4. Carriers (§ 280 (1*))—Passengers Entitled to Highest Degree of Care.—A carrier owes a passenger the highest degree of care to see that he is not injured.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 849.]

5. Appeal and Error (§ 1068 (1*))—Error in Instructions Immaterial Where Disputed Facts Were Settled as Asked by Appellant.—Errors in instructions are not material and need not be discussed on appeal, where the questions of fact about which there could be any dispute were settled by the jury upon instructions exactly as asked by the complaining party; the other party having asked for no instructions.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 600, 601.]

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 62.]

Error to Circuit Court of City of Norfolk.

Action by John B. Cherry against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

E. R. Williams and *J. T. Moore*, both of Richmond, and *W. H. Venable*, of Norfolk, for plaintiff in error.

E. R. F. Wells, of Norfolk, for defendant in error.

E. I. DUPONT DE NEMOURS & CO. *v.* BROWN.

Jan. 20, 1921.

[105 S. E. 660.]

1. Master and Servant (§ 295 (7*))—Instruction on Assumption of Risk Held Unobjectionable.—Instruction that, if the jury believed that a person with ordinary prudence whose mental and physical powers and opportunities for observing the conditions were the same as those of plaintiff would have realized the risks and dangers of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.